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April 6, 1998

VIA HAND DELIVERY

Magalie Roman Salas

Secretary

Federal Communications Commission

1919 M Street, NW

Room No. 222

Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554


Re: In the Matter of Policies and Rules
for the Direct Broadcast Satellite Service
IB Docket No. 98-21

Dear Ms. Salas:

Transmitted herewith, on behalf of United States Satellite Broadcasting Company, Inc. ("USSB"), are an original and four copies of its Comments in the above-referenced proceeding.

Should there be any questions, please communicate with the undersigned.

Very truly yours,


Marvin Rosenberg
Counsel for United States Satellite
Broadcasting Company, Inc.

Enclosures

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Before the
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APR 6 - 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Policies and Rules for the
Direct Broadcast Satellite Service

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IB Docket No. 98-21

**COMMENTS OF
UNITED STATES SATELLITE BROADCASTING COMPANY, INC.**

UNITED STATES SATELLITE
BROADCASTING COMPANY, INC.

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Marvin Rosenberg, a Member of the D.C. Bar

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**COMMENTS OF
UNITED STATES SATELLITE BROADCASTING COMPANY, INC.**

INTRODUCTION

United States Satellite Broadcasting Company, Inc. ("USSB"), by its counsel, hereby submits its comments in response to the *Notice of Proposed Rule Making* released by the Commission in the above-captioned proceeding on February 26, 1998 ("*Notice*").

USSB is a Direct Broadcast Satellite ("DBS") licensee/permittee providing multichannel video programming by satellite directly to subscribers' homes. Accordingly, USSB has a direct interest in these proceedings.

In the *Notice*, the Commission seeks comments on several proposals to amend its policies and rules governing DBS service. These proposals include: (i) whether to consolidate the DBS service rules with the rules for other satellite services in order to provide a consistent regulatory regime for all satellite services; (ii) whether to update its technical rules for DBS service; (iii) whether to strengthen the rules regarding the provision of DBS services to Alaska and Hawaii and whether it should adopt similar measures to promote the delivery of DBS services to Puerto

Rico and other non-continental U.S. territories and possessions; and (iv) whether to adopt explicit DBS ownership restrictions.

DISCUSSION

I. CONSOLIDATION OF DBS RULES INTO RULES GOVERNING OTHER SATELLITE SERVICES

A. The Consolidation of Rules Must Recognize the Unique Aspects of DBS In Order to Distinguish DBS Service from Other Satellite Services.

When the rules for DBS service were adopted, the Commission determined that the public interest would best be served by utilizing a flexible regulatory approach for DBS systems. These rules imposed minimal regulatory requirements consistent with statutory provisions and international agreements.

To that end, USSB supports the Commission's efforts to streamline and simplify its rules governing DBS service. However, in addition to reaping the benefits from consolidation, the Commission, in order to ensure that DBS service continues as an effective competitive alternative to cable systems, also must protect those aspects of DBS which distinguish it from other satellite services. Therefore, when consolidating the DBS service rules into the rules for other satellite services, the Commission must ensure the resulting rules maintain the full protection from interference for DBS service.

Although both DBS and direct-to-home fixed satellite service ("DTH-FSS") provide video services directly to the home via satellite, the Commission has historically regulated DBS differently from fixed satellite services, including DTH-FSS. In doing so, the Commission recognized the unique aspects of DBS service. First, the interim rules established separate

frequency allocations for DBS service than for the fixed satellite services. In the *DBS Order*, the Commission recognized the existing international allocation for broadcasting satellite services in the 12.2-12.7 GHz band and determined that authorization of DBS systems in this band would serve the public interest.¹ Second, the Commission recognized that DBS was different from other satellite services in that DBS is the only service in which the number of orbital slots available to the United States is governed by international treaty. By contrast, orbital locations for all other satellite services are not allocated to specific governments but rather are available upon application to the ITU. Third, DBS orbital assignments in the United States are separated by nine degrees as opposed to two-degree spacing used to accommodate fixed satellite assignments. The greater orbital spacing permits DBS satellite transmissions at considerably higher power than used in other communications satellites which, in turn, enables subscribers to use antennas smaller in size and less expensive than those employed to receive other satellite services. Finally, DBS service, which encompasses video, data, Internet, and other information services, is intended for home reception. In contrast, fixed satellite services are not primarily intended for direct transmission to subscriber's homes.

Therefore, in order to ensure that interference from other fixed service operations do not impair reception of DBS signals, the consolidated rules must maintain separate DBS frequency allocations. Further, the consolidated rules must require licensees of other satellite services to make whatever adjustments in technical parameters or assigned frequencies are necessary to prevent interference to planned or operating DBS systems.

¹ *In re Inquiry Into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites for the Period Following the 1983 Regional Administrative Radio Conference, Report and Order*, 90 F.C.C.2d 676, para. 7 (1982).

B. Foreign Ownership Restrictions

USSB supports the International Bureau's decision in the *MCI Order*² regarding the applicability of foreign ownership restrictions to subscription DBS service. In that decision, the Bureau held that because MCI's request for DBS authority was for subscription (*i.e.*, non-broadcast, non-common carrier) video satellite service, Section 310(b) of the Communications Act did not apply. The foreign ownership restrictions in Section 310(b) apply only to common carrier, broadcast, and aeronautical [en route or fixed] radio station licenses. However, the issue of whether a foreign entity may own a United States DBS license remains unsettled.³ In the event the Commission affirms the Bureau's decision in the *MCI Order*, it should limit its DBS eligibility rules to codify the restrictions of Section 310(a) of the Communications Act to non-broadcast satellite providers. Accordingly, the foreign ownership limitations currently located in Section 100.11 of the Commission's Rules would not apply to subscription DBS providers.

C. DBS Auctions

As a result of the *DISCO I* decision, United States DBS licensees are permitted to provide international service.⁴ In light of this decision, which was adopted subsequent to the Commission's determination to auction the channels at 110° and 148°, any action to select DBS licensees through competitive bidding must be carefully reconsidered and discontinued because

² MCI Telecommunications Corporation, Application for Authority to Construct, Launch and Operate a Direct Broadcast Satellite System at 110°W.L., *Order*, DA 96-1793 (1996).

³ Instead of accepting the conclusion of the International Bureau regarding the foreign ownership issue, the Executive Branch, through the Departments of State and Commerce and the United States Trade Representative have asked the Commission to conduct a rulemaking on the foreign ownership issue before reaching a final determination on any application that involves foreign ownership above the statutory levels applicable to common carriers or broadcast licensees.

⁴ *In re* Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, *Report and Order*, 11 FCC Rcd. 2429, para. 1 (1996).

of the resulting negative impact on the competitive ability of direct broadcast satellite providers to compete internationally.

II. TECHNICAL RULES

A. Any Technical Rule Developed Must Include, Within the ITU Allowance for Alternative Transmission Schemes, Digital Transmissions As Employed in the United States.

The current ITU regulations relating to technical matters were developed without contemplating the technical parameters of the DBS systems that presently operate in the United States. As a result, DBS systems operating from the orbital locations allocated to the United States may operate in a manner that does not adhere strictly to the technical parameters of the ITU's Region 2 Plan for the Broadcast Satellite Service.

Although USSB generally supports the Commission's proposal to create a new rule that requires DBS licensees to comport with Appendices S30 and S30A of the ITU Radio Regulations, any rule adopted must provide for the current technology and needs to promote maximum technical flexibility for United States DBS licensees.⁵ In particular, the rule should include interference criteria which accounts for digital rather than FM modulation.

B. Network Control Center

USSB agrees with the Commission that space station activities must be continuously monitored and coordinated. However, given the limited number of DBS licensees, USSB opposes the Commission's proposal to extend, to DBS licensees, the fixed satellite service rule that

⁵ USSB notes that the Commission has pending before it an application from SkyBridge L.L.C. for authority to launch and operate the SkyBridge System. That proceeding raises the prospect of sharing between DBS and NGSO-FSS systems, and accordingly, the Commission recognizes the need to ensure that U.S.- licensed DBS systems receive sufficient interference protection.

mandates the establishment of a network control center to monitor and coordinate space station activities. Instead, USSB proposes that DBS licensees be permitted to monitor and coordinate space station activities through any available means, including contractual arrangement with third parties.

III. GEOGRAPHIC SERVICE REQUIREMENTS

USSB supports the rule adopted in the *DBS Auction Order* that requires DBS licensees who were granted their authorizations after January 19, 1996 to provide service to Alaska and Hawaii upon commencement of operations, where technically feasible.⁶ However, USSB opposes the Commission's proposal to apply this rule to licensees who were granted their authorizations prior to January 19, 1996 and who request extensions of time or renewal of their licenses to utilize the remaining life of the existing in orbit satellite during the extension or renewal period.

When DBS license terms were initially adopted, the expected life of a satellite was ten years. Since that time, the projected operating life of a satellite exceeds ten years. Therefore, it is unreasonable to require DBS licensees who were granted authorization prior to January 19, 1996, and whose satellite will continue to operate beyond the initial license term, to comply with this requirement when making extension or renewal requests.

⁶ 47 C.F.R. § 100.53.

IV. THE NECESSITY OF CROSS-OWNERSHIP RESTRICTIONS CAN BEST BE DETERMINED ON A CASE-BY-CASE BASIS.

In its *Notice*, the Commission seeks comments on whether, given the status of competition in the MVPD market, it should continue to address specific competition issues on an *ad hoc* basis, or whether it is now appropriate to adopt explicit DBS ownership restrictions. Although cross-ownership restrictions may be desirable in certain circumstances, such restrictions are appropriate only where a threat of market power is apparent. USSB believes that it is neither necessary nor appropriate to impose restrictions on ownership at this time as long as the Commission continues to carefully examine individual situations, and to take appropriate action, when necessary.

Although the Commission notes that incumbent franchised cable systems continue to dominate MVPD programming and that cable rates continue to increase, this alone does not evince a need to impose additional regulations in the form of DBS cross-ownership rules. In the *1997 Competition Report* on the status of competition in the video marketplace, the Commission identified what it believes to be the principal impediments to the growth of competition to incumbent cable operators: (i) the unavailability of local broadcast signals from direct-to-home satellite services, (ii) physical obstructions to over-the-air reception, and (iii) limited MMDS channel capacity.⁷ Notably, the Commission did not cite cross-ownership as a current barrier to competition. Therefore, the Commission's findings do not provide evidence of a need to impose blanket ownership restrictions.

⁷ Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming (Fourth Annual Report), CS Docket No. 97-141, FCC 97-243 (released January 13, 1998) paras. 57, 72 n.272 (*1997 Competition Report*).

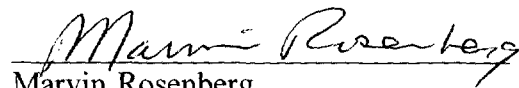
In the absence of evidence that it will serve a useful purpose, the Commission should not impose ownership restrictions. If concentration of control becomes a problem in particular areas, the Commission can consider such situations on a case-by-case basis and vigorously apply its ongoing oversight function, rather than create and apply blanket rules. Further, existing antitrust laws provide adequate protection against possible abuses of market power due to horizontal concentrations of control.

CONCLUSION

When the DBS rules were established, the Commission adopted a flexible regulatory structure for DBS service that permits it to address specific cases based on the facts in existence at a particular time. The continued minimal regulation of DBS systems, only in so far as is necessary to protect the ability of DBS providers to deliver an interference free signal to small dish owners, will continue to facilitate the development of the service, maximize its benefits to the public, and permit flexibility to promulgate policies specifically tailored to DBS.

Respectfully submitted,

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